

501 KAR 1:040. Conducting parole revocation hearings.

RELATES TO: KRS 439.315, 439.330(1)(e), 439.341, 439.390, 439.430, 439.440

STATUTORY AUTHORITY: KRS 439.340(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340(3) requires the Parole Board to establish administrative regulations concerning parole revocation hearings. This administrative regulation contains the procedures for the revocation of parole and the issuance of warrants.

Section 1. Preliminary Revocation Hearings. Preliminary revocation hearings shall be conducted by an administrative law judge of the Parole Board who shall have control over the proceedings and the reception of evidence at these hearings.

(1) Charges of parole violation shall be initiated by a parole officer of the Department of Corrections by service of a notice of preliminary hearing which sets forth the alleged violations. This notice may be amended at any time prior to the close of the record of the preliminary hearing, within the discretion of the administrative law judge, if a finding is made that the substantial rights of the parolee shall not be prejudiced by the amendment. A continuance of the proceeding may be granted in the event of this amendment, if the interest of justice so requires. Failure to object to any defect in the notice prior to the close of the hearing shall be deemed a waiver of this objection.

(2) Pursuant to SCR 3.700 Sub-rule 3, in the absence of an attorney to represent the Department of Corrections, Division of Probation and Parole, before the board and the administrative law judge, any duly appointed probation and parole officer of the Commonwealth of Kentucky may appear before the board or its administrative law judge as representative of the Department of Corrections in matters relating to the revocation of probation or parole.

(3) Unless the waiting period is waived by a parolee, a preliminary hearing shall not be conducted earlier than five (5) days of service of notice of the hearing. The preliminary hearing may be continued or recessed with further proof to be taken at any time prior to the close of the record for good cause shown. At the request of either party, the administrative law judge may, within his discretion, leave the record open for reception of additional evidence provided that no substantial rights are prejudiced.

(4) All preliminary revocation hearings shall be conducted on the record. The hearing may be recorded and preserved by any means practical, including electronically, mechanically, or stenographically. If requested by the board, the record of the proceedings shall be transcribed.

(5) The administrative law judges may take judicial notice of acts of the Parole Board, including the conditions of parole, and all other matters which may be judicially noticed in the courts of this Commonwealth pursuant to KRE 201. Witnesses appearing at the preliminary hearing to give testimony shall do so under oath, administered by the administrative law judge, and shall be available for examination by the other party or the administrative law judge, unless good cause dictates otherwise. The parole officer shall bear the burden of proof in establishing the elements of the violation. The parole officer shall present evidence first and the parolee shall be given the opportunity to present evidence in defense or mitigation. Any further proceedings shall be conducted at the discretion of the administrative law judge. The parolee may, within reasonable limits, present evidence solely for the purpose of mitigation of his conduct, including evidence of his mental condition. If presented, this evidence shall be subject to rebuttal by the parole officer.

(6)(a) At the close of the hearing, or within a reasonable time thereafter, the administrative law judge shall make a determination, from the evidence produced at the hearing, as well as any evidence of which judicial notice is taken, whether there exists probable cause to believe that the parolee has committed any or all of the violations alleged in the notice of preliminary hearing.

(b) Except as provided by paragraph (c) of this subsection, if probable cause is found to exist, the case shall then be referred to the Parole Board which shall then issue a parole violation warrant

which shall cause the parolee to be brought before the Parole Board for a final parole revocation hearing.

(c) Notwithstanding a finding of probable cause, leniency may be granted in any form deemed appropriate by the administrative law judge if all parties agree to the leniency, and if the parolee agrees to any additional conditions of his parole as set forth by the administrative law judge after consultation with the parole officer.

(7) If the administrative law judge finds probable cause to believe that a violation of parole has been committed and the case is referred to the Parole Board for the issuance of a parole violation warrant, the administrative law judge shall issue a written decision and may issue a recommendation, along with reasons in support of that recommendation, as to what action should be taken concerning the parolee's parole, including recommendations concerning the terms and conditions of any future parole. This recommendation shall be advisory only and shall not be binding on the board. If the administrative law judge finds that there exists substantial mitigating factors or a viable alternative to reincarceration, the administrative law judge may recommend that the parolee not be returned as a parole violator. If the administrative law judge makes that finding and recommendation, the case shall be referred to the Parole Board for their vote on the issuance of the parole violation warrant.

(8) In preliminary revocation hearings conducted on probation cases or on cases in which the releasing authority is other than the Kentucky Parole Board, upon a finding of probable cause, the matter may be referred to the releasing authority for further revocation consideration, or leniency may be considered on the same basis as a case in which the Kentucky Parole Board is the releasing authority.

(9) If the alleged violation of parole, as set forth in the notice of preliminary hearing, is new criminal conduct which does not also constitute a technical violation of the conditions of supervision, or the conditions of parole, the case shall not be referred to the board for parole revocation consideration unless it is shown that the parolee has received a conviction in a court of law or there exists some other form of judicial admission, such as a plea of guilty, concerning the alleged criminal conduct, or it is found that the criminal conduct, or a substantial part of it, was committed in the presence of a duly appointed probation and parole officer of the Commonwealth of Kentucky. Nothing in this subsection shall prevent revocation of parole for a technical violation, which also happens to partially or wholly involve criminal conduct.

(10) Any party appearing before an administrative law judge of the Kentucky Parole Board may be represented by counsel if he so desires. The party may have, upon motion thereof, a continuance for the purpose of obtaining the presence of counsel; except that chronic appearance for hearing without counsel by a parolee who is capable of retaining counsel may be deemed an implicit waiver of counsel.

(11) The administrative law judges, in the absence of any specific statutory authorization, shall not consider matters of bail or any other form of release from custody for those persons accused of parole or probation violations.

Section 2. Good Cause Hearings. KRS 439.315 requires the imposition of a supervision fee on all parolees and the establishment of a good cause hearing if the supervision fee is not paid. This section describes the good cause hearing.

(1) Upon nonpayment of any installment of the monthly supervision fee, the parole officer shall serve a notice of preliminary hearing on the parolee and also shall serve the supplemental notice of good cause hearing on the parolee.

(2) The good cause hearing shall be scheduled as any other preliminary revocation hearing.

(3) If the parolee makes the required supervision fee payment prior to the scheduled good cause hearing, the hearing shall be cancelled.

- (4) The parolee shall be permitted legal representation at the good cause hearing.
- (5) The burden of proof to show good cause for nonpayment of the supervision fee shall be placed upon the parolee.
- (6) The administrative law judge of the Kentucky Parole Board shall determine whether good cause exists for the nonpayment of the supervision fee.
- (7) If the administrative law judge finds that good cause exists for the nonpayment of the supervision fee, the charges shall be dismissed and the parolee shall be returned to parole supervision with the previously imposed supervision fee.
- (8) If the administrative law judge finds that good cause does not exist, the parole officer may request that the hearing be continued sine die with the condition that the parolee pay the arrears and agrees to pay the supervision fee on a monthly basis.
- (9) If the administrative law judge finds that good cause does not exist for nonpayment of the supervision fee, absent any motion from the parole officer, the hearing shall immediately continue and become a preliminary parole revocation hearing, and shall be conducted as described in Section 1 of this administrative regulation.

Section 3. Parole Violation Warrant. Parole violation warrants shall be issued as set forth below:

- (1) If a case is referred to the Parole Board by the administrative law judge under the provisions of Section 1(6) of this administrative regulation, the Parole Board shall issue the parole violation warrant. A vote of the board shall not be necessary.
- (2) If a case is referred to the full Parole Board by the administrative law judge with a recommendation that the parolee not be returned to the institution as a parole violator, pursuant to Section 1(7) of this administrative regulation, the board may issue a parole violation warrant, if upon review a majority of the board concurs that probable cause exists to believe a parole violation has taken place. If the board votes to issue the warrant, the warrant shall be issued.
- (3) If it appears that a parolee has absconded from parole supervision, it otherwise appears that a parolee is a fugitive from justice, or a parole violation warrant is necessary to effect the return of the parolee to the state of Kentucky, the Parole Board may issue a warrant, if it receives documentation from the supervising parole officer, setting forth facts sufficient to conclude there are reasonable grounds to believe that some violation has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.
- (4) If the parolee is being supervised outside the state of Kentucky, a parole violation warrant may be issued upon a vote of the Parole Board based upon a written report from the supervising state setting forth facts sufficient to conclude that there are reasonable grounds to believe that a violation of parole has occurred, and the commissioner or his designee submits to the board a recommendation that a warrant be issued.
- (5) In all other cases parole violation warrants may be issued only upon majority vote of the board, except as set forth in subsection (7) of this section. If the board votes to issue any warrant, the warrant shall be issued.
- (6) The board may decline any request for a parole violation warrant made pursuant to any section of this administrative regulation except subsection (1) of this section. Any parole violation warrant, issued under any section of this administrative regulation, may be rescinded by majority vote of the board at any time.
- (7) If a vote of the board is required to issue a parole violation warrant, and if there is no quorum of the board present to concur that probable cause exists and the warrant should be issued, any member of the Parole Board may issue a parole violation warrant if he, upon review concurs that probable cause exists to issue said warrant. If a parole violation warrant is issued under these circumstances, the board shall vote, as soon as is reasonable, on whether or not to concur in the issuance of the warrant. If a majority of the board does not concur, the warrant shall be voided by the

board.

(8) Any member of the Parole Board may sign warrants.

Section 4. Preliminary Hearings Conducted Subsequent to the Issuance of the Parole Violation or for Parolees Supervised in Another State. (1)(a) This subsection shall not apply if a parolee is being supervised by another state and if that supervisory state held a preliminary parole revocation hearing for the parolee.

(b) A preliminary revocation hearing shall be conducted pursuant to Section 1 of this administrative regulation, if:

1. A parole violation warrant has been issued for a parolee without a preliminary revocation hearing; and

2. The parolee is apprehended or returns to the state of Kentucky.

(c) Except as provided by paragraph (e) of this subsection, following the hearing, the parolee shall be ordered returned to the appropriate institution of the Kentucky Department of Corrections for further consideration by the Parole Board if the administrative law judge finds that there is probable cause to believe that:

1. The parolee committed any of the violations contained in the warrant; and

2. The warrant was validly issued as to any of the charges contained within it.

(d) If the administrative law judge finds no probable cause, the case shall be referred to the Parole Board which shall withdraw the warrant and return the parolee to supervision.

(e)1. If probable cause is found, the administrative law judge may refer the case back to the Parole Board to decide whether the warrant should be exercised or withdrawn if:

a. The parole officer moves for a referral; or

b. The administrative law judge finds that there are overwhelming mitigation factors present that were not known to the board at the time of the warrant's issuance.

2. If referred back to the Parole Board, the administrative law judge may include a recommendation that the warrant be rescinded. This recommendation shall be advisory only and shall not be binding on the board.

3. If the Parole Board decides to withdraw the warrant, the parolee shall be returned to normal parole supervision, subject to any additional conditions the Parole Board may impose.

4. If the Parole Board decides to exercise the warrant, the parolee shall be ordered returned to the appropriate institution.

(2) If a preliminary parole revocation hearing is held by the supervising state for a parolee being supervised in another state, and the supervising state concludes as a result of the hearing that a violation has occurred, the case shall first be reviewed by an administrative law judge of the board who shall determine whether or not the proceeding held in the supervising state, and the conclusions reached in the hearing, complies with due process. After the review, the administrative law judge shall refer the case to the Parole Board as set forth in Section 1(6) of this administrative regulation.

Section 5. Waiver of Preliminary Parole Revocation Hearings. (1) Any parolee charged with a violation of his parole may waive appearance before an administrative law judge of the Parole Board and by so doing waive his preliminary parole revocation hearing. Parolees desiring to waive this hearing shall submit their waivers in writing to the board or its administrative law judge for approval. These waivers may be accepted within the discretion of the board or its administrative law judges. No waiver shall be accepted unless it is found that the waiver was entered into by the parolee knowingly, and voluntarily and that the parolee is, and clearly understands that he is admitting guilt as to the violations charged. Notwithstanding the submission and acceptance of a waiver of the preliminary parole revocation hearing, the parolee may still submit evidence in mitigation of his conduct.

After approval of the waiver, the matter shall proceed in the same manner as after a hearing before an administrative law judge.

(2) If a parolee being supervised in another state signs a waiver of preliminary hearing in that state, this waiver shall be reviewed by an administrative law judge of the board to determine if the waiver meets the requirements of subsection (1) of this section. If the administrative law judge determines that the waiver does not comply with subsection (1) of this section, the executive director shall refer the matter back to the Division of Probation and Parole and request that they take action necessary to insure compliance with this administrative regulation.

Section 6. Final Parole Revocation Hearings. Final parole revocation hearings shall be held within thirty (30) days after the return of the parolee to a state institution. At this hearing, the parolee shall have the charges, specified in the warrant, explained to him and he shall be given the opportunity to admit or deny them. If the inmate admits to the charges, then the board shall receive proof in mitigation of the charges. If the parolee wishes to present new or different information than presented at the preliminary hearing, and shows that this information could not have been presented at the preliminary hearing, he may request a special hearing. The grant or denial of a special hearing shall be totally within the discretion of the board. If granted by the board, a short deferment shall be given so the special hearing can be scheduled in central office and the parolee can secure legal counsel. The request for a special hearing by a parolee shall occur at the beginning of the final parole revocation hearing, before he admits or denies guilt. The parolee shall be notified of his right to request a special hearing at his preliminary parole revocation hearing. It is the responsibility of the parolee, and his alone, to request a special hearing if he so desires one.

Section 7. Special Hearings. (1) Special hearings shall be conducted in the central office of the Parole Board, unless the Parole Board changes the site for security or other factors it deems pertinent. In cases so heard, if the parole officer or the parolee requests the issuance of subpoenas to compel the appearance of witnesses or production of documents, the board shall issue them pursuant to KRS 439.390, if no claims for expenses incurred by these witnesses shall be submitted to the board, as it has no authorization to pay these expenses.

(2) At the special hearing, the following order of proceedings shall be followed:

- (a) The parolee, parole officer, and all witnesses shall be sworn in by the Parole Board.
- (b) The board shall present a short statement of the charges against the parolee.
- (c) The parole officer shall present proof to substantiate the charges, subject to cross-examination by the parolee.
- (d) The parolee shall present proof to rebut the parole officer's charges, subject to cross-examination by the parole officer.
- (e) The parole officer may put on any rebuttal proof subject to cross-examination.
- (f) The board may question both the parolee and the parole officer and any witnesses.
- (g) The board shall then make a determination as to whether the parolee has violated his parole.
- (h) If the parolee is found in violation or if he admits the violation and has proof in mitigation, the board shall receive proof from the parolee in mitigation of the violation subject to cross-examination.
- (i) At the conclusion of the special hearing, the board shall make a determination as to the disposition of the case and notify the parolee in person or in writing as soon as practical.

Section 8. Waiver of Final Parole Revocation Hearing. A parolee being held pursuant to a parole violation warrant may, subsequent to his preliminary parole revocation hearing, or acceptance of a waiver thereof, request that he be allowed to waive his final parole revocation hearing. Parolees desiring to waive this hearings shall submit their waivers in writing to the board. Acceptance of this waiver shall be totally within the discretion of the board and shall be based only upon a finding that

the waiver is entered into knowingly and voluntarily and that the parolee is admitting guilt as to the violations charged. Waiver of the right to the final hearing shall also be considered as waiver of any rights to a special hearing as provided for in Sections 6 and 7 of this administrative regulation. In the event that waiver of the final hearing is accepted, the final decision on the revocation of the parolee's parole shall be made by the board without any further proceedings. (15 Ky.R. 1190; eff. 12-2-88; Am. 19 Ky.R. 2295; 20 Ky.R. 72; eff. 7-12-93; 21 Ky.R. 2169; 2674; eff. 5-4-95; 27 Ky.R. 3351; 28 Ky.R. 618; eff. 9-10-2001.)